

<sup>1</sup> See K.S.A. 1999 Supp. 44-510(c)(1).

claimant reported left wrist and neck pain. Because he had no record of claimant mentioning these symptoms before July 12, 1999, Dr. Morris stated that "It is difficult to imagine that someone would have these other complaints that are just now severe enough to warrant investigation, almost a year out from his original injury." However, Dr. Morris went on to state that "[t]he wrist, with a fall on the left hand, could possibly be involved . . ."<sup>2</sup> Respondent denied treatment for the wrist and neck.

Following an October 7, 1999 preliminary hearing, Judge Barnes ordered an independent medical examination (IME) by physical medicine specialist Philip R. Mills, M.D., on the question of whether claimant's wrist and neck complaints were causally connected to the work-related injury. Dr. Mills determined that those injuries were probably related to the September 1, 1998 accident, but that claimant had reached maximum medical improvement (MMI). Accordingly, Judge Barnes issued an order denying claimant's request for additional treatment.

Thereafter, because of his ongoing symptoms, claimant's attorney directed him to another physical medicine and rehabilitation specialist, Jane Drazek, M.D. After examining claimant on March 15, 2000, Dr. Drazek opined that claimant's left wrist, left shoulder and cervical complaints had their onset with the September 1, 1998 accident. As claimant had not received any treatment for his cervical spine or wrist, Dr. Drazek recommended a therapy evaluation to improve range of motion of the neck and wrist and also to improve strength of the left wrist and hand. She believed claimant had not yet reached MMI.

Claimant is again asking for additional medical treatment. At the conclusion of the April 27, 2000 preliminary hearing, Judge Barnes granted claimant's request. The ALJ's Order also named Dr. Drazek as the authorized treating physician. Respondent argues that in so doing the ALJ violated provisions of K.S.A. 1999 Supp. 44-510(c)(1) which states in pertinent part as follows:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.

As above indicated, the Appeals Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review. Respondent cites the decision by the Appeals Board in Chilargo v. W. H. Braums, Inc., WCAB Docket No. 198,309 (June

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<sup>2</sup> Letter of September 13, 1999, Respondent's Exhibit 1 to October 7, 1999 Preliminary Hearing.

1996). In that decision, rendered by one member of the Appeals Board, it was determined that an order changing authorized physician without first allowing the respondent to provide a list of three physicians exceeds the jurisdiction of the ALJ.

However, the majority of the Appeals Board views the issue of jurisdiction differently. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

The workers compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injury arising out of and in the course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 1999 Supp. 44-534a as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are designated as jurisdictional issues under K.S.A. 1999 Supp. 44-534a. Whether the ALJ must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the ALJ. An ALJ has the jurisdiction to decide this question.<sup>3</sup> Furthermore, in this case the respondent had denied claimant treatment based on the opinion of Dr. Morris that the wrist and neck complaints were probably not work related. Therefore, except for the left shoulder condition, at the time of both preliminary hearings, there was no authorized treatment being provided to claimant.

Finally, as to the left wrist and neck injuries, the Appeals Board concludes these are directly attributable to the September 1, 1998 accident and, therefore, arose out of and in the course of the employment. Claimant testified that when he stepped in the hole and fell, he caught himself with his left hand and the jolt caused him pain in his left wrist, shoulder and neck. By the time claimant was referred to Dr. Morris his shoulder was his primary concern, but claimant testified he also mentioned his other complaints. In addition, both Dr. Mills and Dr. Drazek relate claimant's wrist and neck symptoms to the fall at work.

**WHEREFORE**, the Appeals Board finds and concludes that the first issue raised by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issue on an appeal from a preliminary hearing order. As to the second issue raised, the Order by the ALJ dated May 22, 2000, is affirmed.

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<sup>3</sup> See Briceno v. Wichita Inn West, WCAB Docket No. 211,226 (Feb. 1997) and Graham v. Rubbermaid Specialty Products, WCAB Docket No. 219,395 (June 1997).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2000.

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
P. Kelly Donley, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director